

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Robert E. and Windell P. Davis

94-01949

Name of Respondents

Paul J. Witham
RAF Financial Corp.
Chatfield Dean & Co., Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on May 25, 1994, Claimants, Robert E. Davis and Windell P. Davis ("Claimants"), who appeared Pro Se, alleged that Respondents, Paul J. Witham ("Witham"), Chatfield-Dean & Co., Inc. ("Chatfield-Dean"), and RAF Financial Corp. ("RFC"), concealed and price controlled Claimants' holding of 5,000 shares of Banyan Industries, Inc., stock. Claimants further alleged that on June 24, 1988, the shares were purchased through Respondent Witham, of Tri-Bradley Investments. Claimants contended that although they called Respondents at least once a month from the time of purchase, they did not receive notification "on the share purchase", until June 30, 1989, and by then, the shares were, "not exercisable". Claimants further contended that Tri-Bradley Investments was taken over by Respondent Chatfield-Dean and that Chatfield-Dean gave no information regarding Respondent Witham's location and said they had no knowledge of Claimants' shares. Claimants alleged that on July 31, 1991, after Claimants contacted the NASD, Inc., they were contacted by RFC, which apprised Claimants that RFC was holding 5,000 shares of Banyan Industries, Inc., in their account. Claimants further alleged that since July 31, 1991 they have heard nothing regarding a loss suffered by the shares. As a result of the above, Claimants alleged that they have suffered a loss for which Respondents should be held liable.

Respondent, Chatfield-Dean & Co., Inc., through its representative, Christa Taylor, Esq., of Greenwood Village, Co., maintained that there is no truth to the matter that Chatfield-Dean took over Tri-Bradley at any time nor held, or had knowledge of Claimants' account with Tri-Bradley. Respondent, Chatfield-Dean, further maintained that although it did employ Witham between July of 1990 and May of 1991, Witham did not service any account concerning Claimants. Chatfield-Dean contended that Claimants' failure to receive mail was due to Claimants' failure to provide a current address and accordingly, it should not be held liable.

Respondent RAF Financial Corp., through its representative, Harold R. Bruno, III, Esq., Denver, Co., maintained that they merely performed back-office clearing services for Tri-Bradley and had no duty, fiduciary or otherwise, to the owners of the securities because the owner's relationship was solely with the broker/dealer. Respondent further maintained that they had no duty to supervise Tri-Bradley and, therefore, cannot be liable to the Claimants for any alleged dereliction in its claimed duty to supervise. Respondent contended that Claimants must show a "conscious intent" to defraud Claimants, which Claimants did not do, and accordingly, it should not be held liable.

Respondent, Paul J. Witham, failed to submit an answer to the Statement of Claim.

RELIEF REQUESTED

Claimants, Robert E. Davis and Windell P. Davis, requested \$2,387.00 in actual damages, plus \$5,000.00 in punitive damages and interest.

Respondent, Chatfield-Dean & Co., Inc., requested that the claims of the Claimants be dismissed.

Respondent, RFC, requested that the claims of the Claimants be dismissed and that it be awarded costs and attorney fees. Respondent, Paul J. Witham failed to submit an answer to the Statement of Claim.

OTHER ISSUES CONSIDERED & DECIDED

In accordance with Section 13 of the NASD Code of Arbitration Procedure, the Respondent, Paul J. Witham was served by regular mail and given an opportunity to respond, which he failed to do.

Pursuant to the By-laws of the NASD, the Arbitrator determined that Respondent, Paul J. Witham, had notice of the claim, and was required to submit to this arbitration proceeding; and is therefore, bound by the arbitrator's ruling and determination.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Roger A. Kirschenbaum, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on May 20, 1994, and by Respondent, Chatfield-Dean & Co., Inc., on August 8, 1994, by Respondent, RAF Financial Corp., on September 9, 1994, and not by Respondent, Paul J. Witham, as required by Sections 12 and 13 of the Code of Arbitration Procedure. And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of the Claimants, Robert E. Davis and Windell P. Davis, against Respondents, Paul J. Witham, Chatfield-Dean & Co., Inc., and RAF Financial Corp., are dismissed in their entirety.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants shall be retained by the NASD, Inc.


Affirmation

STATE OF

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COUNTY OF

I, ROGER A. KIRSCHENBAUM, do hereby affirm upon my oath
as arbitrator that I am the individual described in and who executed this instrument,
which is my oath and award.



Signature of Arbitrator

DATE OF DECISION: September 27, 1995